

The orders dated 8/6/2007 of the Director of Secondary Education, Assam, holding that the respondent No. 4 was entitled to be the in-charge Principal of Batgharia Higher Secondary School (hereafter referred to as the School) in addition to his normal duties and his installation as such have been impugned in the instant proceeding. The petitioner claims to be the senior most Assistant Teacher of the School and thus entitled to hold the charge of the said office.

2. I have heard Mr. DC Mahanta, Sr. Advocate for the petitioner and Mr. VM Thomas, learned Standing Counsel, Education Department for the official respondents. Also heard Mr. KK Phukan, learned Counsel for the respondent No. 4.

3. The abridged facts pleaded by the petitioner are that being appointed as a Hindi Teacher of the above named school, he joined the institution on 1/4/1978. He thereafter passed the B.A. examination in the year 1985 and also acquired the B. Ed. in the year 1995. In the meantime, he also passed the Hindi Prabin Examination in the year 1979 and B. Ed. (Hindi) Examination in the year 1984. According to him, the Inspector of Schools, Dhemaji District Circle, Dhemaji, acknowledging him to be the senior most Assistant Teacher of the School allowed him to discharge the duties of the Principal of the School in addition to his normal duties by his order dated 19/2/2005. On the eve of the retirement of the regular Principal, Shri Mahendra Nath Konwar on 30/4/2007, the petitioner being the senior most Assistant Teacher submitted an application on 27/3/2007 to be the Principal in-charge of the School. Thereafter the said authority by his order dated 5/5/2007 permitted the petitioner to hold the charge of the Office of the Principal of the School subject to the approval of the Director of Secondary Education, Assam. The arrangement was supposed to continue till a regular incumbent was appointed to the said office. The petitioner has averred that in between, on 19/3/2007, the Principal of the institution had forwarded the statement of particulars of teachers for selection for the post of Principal/Vice Principal thereof in which the name of the petitioner appeared at serial No. 1. It was at that stage that by the impugned orders dated 8/6/2007 referred to above, the respondent No. 4 was held entitled to hold the charge of the office of the Principal of the School in preference to the petitioner. Contending that he is academically superior to the respondent No. 4 and further senior to him in service, the petitioner has questioned the legality and/or validity of the said decision.

4. The Deputy Directory of Secondary Education, Assam, in his affidavit while asserting that the Inspector of Schools Dhemaji, had no authority to appoint the petitioner as the Vice-Principal in-charge of the School in terms of Rule 2(n) of Assam Secondary Education (Provincialisation) Service Rules, 2003, (hereafter referred to as the Rules) has maintained that the respondent No. 4, Assistant Teacher of the said School was senior in service to the petitioner as per Rule 24(2)(ii) of the Rules. According to the deponent, the seniority of a Hindi Teacher (Classical) is to be counted with effect from 3/8/1990 in terms of the Government letter No. B(3) S-244/99/42 dated 3/8/1990. As the respondent No. 4 was appointed as Assistant Teacher on 20/9/1980 in the same school, he was apparently senior to the petitioner and thus was permitted to hold the charge of the office of the Principal of the School on due determination of the inter se seniority of the parties.

5. The respondent No. 4 while reiterating the above stand of the State authority has pleaded that by order dated 8/6/2007, after a detailed consideration of all relevant aspects, he was held entitled to hold the charge of the office of the Principal of the School and following the said arrangement, he on 12/6/2007 assumed the office. He has stated that in spite of the petitioner's academic degrees, he was in law not eligible for promotion to the post of Principal and it was only as per the Government circular dated 3/8/1990 whereby the Classical Teachers of Hindi, Sanskrit etc had been inducted in the cadre of general teachers that he was qualified to be considered therefor. The answering respondent

appended to his affidavit the notification/circular dated 3/8/1990, the office memorandum dated 15/6/2002 and the order dated 3/5/2007 of the Principal Secretary to the Government of Assam, Education Department, and the Inspector of Schools, DDC, Dhemaji, respectively along with the guidelines for finalization of seniority in respect of High/Higher Secondary School teachers to buttress this contention. In an additional affidavit filed by the said respondent, he asserted to have taken over charge of the office of the Principal of School on 12/6/2007.

6. Mr. Mahanta has emphatically urged that as the petitioner is academically qualified and eligible to be recruited to the post of Principal of School, he is entitled to be the in-charge of the said office pending regular appointment, he being the senior most Assistant Teacher of the institution. According to him, school seniority being the determinative criteria to ascertain such entitlement, the respondent No. 4 who is apparently junior to the petitioner could not have been favoured with the said benefit. The learned Sr. Counsel urged that in the meantime the petitioner has appeared in the selection for regular appointment as Principal, which demonstrates that he is eligible therefor. In any view of the matter, as the impugned orders occasion replacement of one adhoc employee by another, the same cannot be sustained in law. The learned Sr. Counsel contended that the contentions based on the office memorandum/circular dated 3/8/1990 are inconsequential in view of the determination of this Court in *Sadou Asom Madhyamic Snatak Bhasha Shikhak Santha and others versus State of Assam and others*, 2004 (3) GLT 627 adjudging Rule 24(2)(ii) as ultra vires. In support of his contentions Mr. Mahanta placed reliance also on the decision of this Court rendered in *Sujit Paul versus State of Assam and others*, 2007 (2) GLT 329.

7. Mr. Thomas as against this has argued that it being obvious from the office memorandum/circular dated 3/8/1990 and Rule 24(2)(ii) of the Rules that the seniority of a Classical Teacher in the grade of Graduate Teacher is to be computed w.e.f. 3/8/1990, the petitioner's claim of superior seniority over the respondent No. 4 is misconceived and, therefore, the impugned orders are unsailable.

8. Mr. Phukan while abiding by the above submission has taken this Court to the documents annexed to the respondent No. 4's affidavit to contend that in view of the consistent and conscious decision of the respondent authorities to count the seniority of a classical teacher w.e.f. 3/8/1990, the plea inconsistent therewith is untenable. As the respondent No. 4 in the meantime has assumed the charge of the office of the Principal of the School and the arrangement is a temporary one, no interference is called for.

9. I have extended my thoughtful consideration to the rival submissions. Indubitably the Rules regulate the recruitment and conditions of services of the persons appointed to the Assam Secondary Education (Provincialisation) Services. Under Rule 12, the posts of Principal in Higher Secondary Schools and Multipurpose Schools are to be filled up by direct recruitment on the basis of the selection made by the State Selection Board at the State Level. The minimum qualification for appointment to the post of Principal is 15 years of teaching experience as Post Graduate Teacher in any Higher Secondary and Multipurpose School or 17 years of teaching experience as Graduate Teacher in any Higher Secondary and Multipurpose School. The candidate must not be aged less than 40 years and must possess a commanding personality, administrative ability and integrity. There is no wrangle at the bar that both the petitioner and the respondent No. 4 are eligible to be recruited to the post of Principal of the School. Rule 24(2)(ii) ordains that the seniority of a Classical Teacher would be counted as per Government Letter No. B(3)S.244/99/42 dated 3/8/1990 from that date. Incidentally the vires of this provision came to be assailed before this Court amongst others in *Sadou Asom Madhyamic Snatak Bhasha Shikhak Santha and others*, supra. The learned Single Judge upheld the challenge and adjudged Rule 24(2)(ii) of the Rules to be unconstitutional and ultra vires and struck down the same. Against the said decision *WA 128/05, Azizur Rahman Talukdar and others versus Sadou Asom Madhyamic Snatak Bhasha Shikhak Santha and others*, has been preferred. The appeal has been admitted and is pending disposal. Further the Division Bench of this Court by order dated 18/2/2007 passed in Misc. Case 414/05 has suspended the operation of t

he judgment impugned. In this factual premise in absence of any challenge to the vires of Rule 24(2)(ii) of the Rules in the instant proceeding, this Court considers it inappropriate to act on the ratio of the determination of the learned Single Judge in the above case more particularly when the issue is sub judice before a higher forum.

10. That school seniority is an accepted and extant criteria for in charge incumbency in the office of the Principal of a Higher Secondary School is not in dispute. As a matter of fact this Court in Sujit Paul, supra, has acknowledged and approved the said determinant. Unmistakably, however, such seniority would be relevant only if the candidate concerned is otherwise eligible to hold the said post. The decision to include the classical teachers of Hindi, Sanskrit, Assamese having degree qualification in the cadre of general teachers for extending the benefit of promotion to higher post in the same line of general teachers as embodied in the circular/memorandum dated 3/8/1990 got engrafted in Rule 24(2)(ii) of the Rules which mandates that seniority of such classical teachers would be counted w.e.f. 3/8/1999. In the prescribed criteria for fixation of seniority in respect of High/Higher Secondary teachers, the same stipulation has been reiterated. The office memorandum dated 15/6/2002 (Annexure D to the affidavit of the respondent No. 4 also affirms the said decision. By the order dated 3/5/2007 of the Inspector of Schools, DDC, Dhemaji, the service of the petitioner has been converted from that of Hindi Graduate Teacher to General Graduate Teacher (Arts). There are series of directions of the concerned authorities of the Education Department to compute the seniority of classical teachers brought into the cadre of general teachers for the purpose of promotion to higher post on and from 3/8/1990.

11. Though it has been contended in course of the arguments that the petitioner has already appeared in the selection for regular appointment to the post of Principal of the School, the same does not stand corroborated by any documentary evidence.

12. The fact that emerges is that the petitioner's service seniority as a Graduate Teacher is computable only w.e.f. 3/8/1990. The post of Graduate Teacher being the feeder post for recruitment to the office of the Principal, seniority therein would be relevant to determine the entitlement of the in-chargeship thereof as well. Admittedly the respondent No. 4 had been appointed as a Graduate Teacher in the School w.e.f. 20/9/1986. Viewed from that angle, he is senior to the petitioner as a graduate teacher. The respondent No. 4's assertion that in the meantime, w.e.f. 12/6/2000, in compliance of the impugned orders he has assumed the office of the Principal of the said School has remained un-refuted.

The arrangement devised by the impugned decision being a stop gap one to be subject to the regular appointment on the basis of the selection in terms of the Rules, I am of the considered opinion that in the facts and circumstances as obtained in the instant case, no interference with the orders impugned is warranted in the exercise of this Court's power of judicial review. The petition being without any merit is dismissed. No costs.